

Whistleblowers claim Dupont hid leaks

Witnesses describe vapor clouds, equipment problems

by David J. Mitchell

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Two days after firefighters showed up at DuPont's Burnside facility in Ascension Parish to investigate a report of a gas cloud crossing River Road in May 2012, plant manager Tom Miller had a message for his workers.



Advocate staff photo by BILL FEIG
— Dupont plant on LA-44 in
Burnside, La.

At a meeting, Miller said the anonymous complaint to the Fire Department was the third to outside agencies about gas leaks at the plant — and the calls had to stop if they were being made by employees.

“You know, come forward with it and talk about it instead of calling agencies and stuff is my point,” said Miller, whose comments were being secretly recorded by one of the workers. “If you know somebody doing that, tell them to quit doing it as well. We don’t need this kind of help. DuPont will shut plants down for this. I mean no doubt about it, shut them down for good. I’ve seen it happen before. It just takes one iota of information; the next thing you know, it blows up into this big problem.”

Exactly what Miller meant by his comments that day is an important legal thread in a whistleblower lawsuit accusing the plant's management of hiding toxic leaks for about two years to avoid being fined by the U.S. Environmental Protection Agency. Just upriver of the Sunshine Bridge, the DuPont plant makes sulfuric acid for surrounding industry.

In addition to a tape of the meeting, evidence filed in U.S. District Court in Baton Rouge includes a video recording of one of the leaks and excerpts of sworn statements taken from plant workers and managers during questioning by lawyers for both sides. The witnesses — most of whom aren't plaintiffs in the case — discuss the leaks. Several described vapor clouds drifting off-site and problems with the custom-made equipment DuPont used to vacuum up gas escaping from cracks in equipment.

The plaintiffs point to Miller's speech as proof that he and others at DuPont tried to

cover up the extent of gas leaks. They also accuse Miller of discouraging workers from writing reports on the leaks or using an internal DuPont system that regulators, including the state Department of Environmental Quality, could check.

Miller declined comment, citing a company policy against speaking about pending litigation. But in a sworn statement filed in the case, he did not dispute making the statements. He said he wanted to maintain workplace safety and was encouraging employees to collaborate on problems because DuPont had experience with the plant that EPA and other government agencies lacked.

"I was trying to get us together as a team to work on things," he said after a plaintiff's attorney played the recording of the meeting for him. "Because there were some employees on the plant that chose not to do that. They wanted to go and report to OSHA and DEQ, fire department. Instead of being part of the solution, they wanted to be part of the problem."

DuPont has issued a blanket denial of the whistleblower allegations in court papers. Asked for comment on Miller's speech and the plaintiff's claims about leaks, the company offered a general statement.

"At DuPont, our core values of safety and environmental stewardship guide all our actions," said Tara Stewart, a DuPont spokeswoman. "DuPont has a rigorous procedure for managing emission events at our plant sites. Our primary concern is for the safety of our employees and the surrounding community, as well as for the protection against impact to the environment."

DEQ twice visited the site, in June 2012 and last November, to check into complaints alleging leaking gas. DEQ officials found the leaks had been repaired, agency records show, though the plaintiffs claim the inspectors were not taken to the right areas by DuPont staff in the latter instance.

Last month, DuPont asked DEQ for modifications to an air permit so the company can completely replace parts of the plant where witnesses claim the leaks occurred. The company told DEQ the equipment has had chronic maintenance issues.

"This requires the plant to shut down and repair, which impacts uptime and meeting customer commitments," DuPont said. "There is concern that effective repairs can continue to be made to the unit."

Dispute over nature of leaks

Jeffrey M. Simoneaux, the former DuPont safety officer and operator who sued as a whistleblower in 2012, claims the leaking gas was sulfur trioxide, a cancer-causing

chemical that can react with moisture to form a corrosive sulfuric acid mist. As a whistleblower, Simoneaux could be awarded almost a third of any fines DuPont might be forced to pay in the case.

Another former DuPont employee, Leo Scott Jr., makes similar allegations in a separate case, claiming he was injured by the gas. Both men say DuPont officials retaliated against them.

Simoneaux, who was the person who taped Miller, claims the plant manager not only chastised him for emailing a supervisor about efforts to slow the plant to stem the flow of a leak going over the fence line but also refused to look at the problem. Miller, according to Simoneaux, got angry at him for reporting leaks in logbooks, saying someone could do an environmental audit and find the entries.

Asked by attorneys about discouraging employees from reporting the leaks, Miller said he encouraged employees to use the internal reporting system, though he told them not to make more than one initial report on continuing leaks because that would be redundant.

The plaintiffs also accuse DuPont of attempting to avoid a costly shutdown to fix the holes, partly by trying to stem the leaks with suction devices made of sheet-metal boxes and tubing. The devices often failed after melting or being corroded by the acid and weren't 100 percent effective even when not damaged, two witnesses said.

While plaintiffs Simoneaux and Scott claim the gas is sulfur trioxide, one witness said the leaks were either sulfur trioxide or sulfur dioxide. Sulfur dioxide is not cancer-causing but can affect the respiratory system and is dangerous at high enough levels. Higher-ranking DuPont officials do not directly address what constituted the leaks in excerpted depositions, though two DuPont leak estimates submitted to DEQ say those leaks were largely sulfur dioxide.

Lonnie Blanchard, a contractor with KBR who worked at DuPont, said his job was to keep the plastic suction hosing running to vacuum up leaking gas. In his deposition last September, he estimated that the plant had about two dozen leaks.

"Some of them are real small, but some of them are major," said Blanchard, who is not a plaintiff.

Blanchard said he thinks the gas was sometimes sulfur dioxide and sometimes sulfur trioxide.

Blanchard said he spent much of his time checking whether the gas, which he described as a mist trail that rose and then hugged the ground, had gone off DuPont's property out of concerns toxic sulfur trioxide was escaping. He said he

reported to upper management, including Miller.

Blanchard added that he had seen “real bad” leaks of gas going off-site at least five times in two years while driving to work across the Sunshine Bridge. He said he would mentally calculate how much suction pipe would need replacing.

“When you’re low, it’s more difficult to see it because you’re looking up into the sky, but when you’re up, looking down, you can see it better,” Blanchard said. “That’s why maybe on the Sunshine Bridge I can see better than when I get — because I know exactly how bad it is before I even get to the plant, and I can probably almost say what it is before I even get there.”

Longtime plant worker Percy Bell said the frequency and unpredictability of the gas leaks worried him. Bell, who like Blanchard is not a plaintiff, said that based on where the processing equipment was leaking, he knew the gas was sulfur trioxide or a mixture of sulfur trioxide and sulfur dioxide.

He told the lawyers that the suction tubing deployed to help control the leaks was not designed to be used for long periods of time and failed without warning.

Bell, a 37-year veteran at the plant at the time of his interview with lawyers, added that there had been no training on the issue. While workers checked the vacuum tubing every day and had monitoring cameras, the gas leaks were only being detected visually, not with alarms or detectors, he said.

“Someone is always in the area during working hours. At night, you don’t know until — you might see it, might not,” Bell said.

Bell explained how prevailing winds and the size of the leaking holes in the equipment determined the volume of the chemical clouds and where they would drift.

Bell said one of the plant’s stack cameras could view Sorrento Primary School, which is about a mile away, and he was worried the gas could wind up there.

“On any day for the last couple of years, one of these big gas clouds of the velocity you were talking about could form and drift east toward the school, right?” plaintiffs’ attorney Jane Barney asked Bell.

“It could,” he responded.

School officials said they have never been informed of any concerns about gas from the plant reaching the school. The lawsuits don’t claim gas ever reached the school, nor does any of the testimony indicate that.

Like the two plaintiffs, Blanchard and Percy recounted incidents in which gas went off the premises. Blanchard recalled gas heading toward River Road, toward the former Ormet Primary Aluminum Corp. plant or into nearby woods.

In his lawsuit, Scott claims he was exposed to the sulfur trioxide in May 2012 when he ran into a large leak. Scott alleges that when he returned to work five months later, he wore a protective suit and respirator. He claims he was eventually written up by Miller for wearing too much protective gear when it was not needed, creating “unsafe” conditions.

Asked by plaintiff’s attorneys what he thought about Scott’s wearing a protective respirator on the job, Bell said he knows the sight and smell of sulfur trioxide and has the experience to work safely without such equipment.

Bell added that with the type of work he did, he also could avoid areas when the leaks were bad. Bell said Scott didn’t have the same experience or the option to wait.

“What he have to do, he have to go back there,” Bell said. “I can delay my work.”

Leak reporting unclear

DuPont training materials filed in court say employees are duty-bound to aggressively report problems internally that “might be” a substantial risk to the public or environment. DuPont warns workers that they themselves face personal liability if such problems aren’t reported to superiors. Employees who report problems that DuPont doesn’t feel are substantial risks — and doesn’t report to regulators — can report the issues to EPA without fear of job consequences, according to the training guides.

“It is better to over-report,” one guide says, “than to not report.”

The deposition excerpts filed so far in the case include acknowledgements from Miller and other current and former DuPont employees that they didn’t know whether the leaks were ever reported to EPA. Miller also said he never sought permission from EPA or DEQ to use the gas-suction system.

“I’m not aware of anybody that spoke to anyone outside of the plant,” Kerry Long, a former DuPont environmental coordinator, told the plaintiffs’ attorneys in December. “I don’t have specific knowledge of anyone spoke to anybody, any agency about any leaks at the plant.”

T.J. Ozbun, who became the DuPont Burnside plant’s environmental coordinator in January 2013, testified last November that he was never asked by anyone to determine if the leaks merited reporting under federal rules and was not aware of

anyone who did so.

DuPont attorneys informed the plaintiffs in October that no documents have been found indicating such reports were ever made.

The leak litigation has not progressed to the point that DuPont's full defense strategy has been revealed.

But based on the limited deposition transcripts filed so far, DuPont officials such as Ozburn suggest the leaks were not large enough to require reporting under the federal laws the plaintiffs are citing.

The DEQ inspectors who visited the plant in June 2012 and November 2013 to follow up on leak complaints reported that they spoke with DuPont officials, did not see ongoing leaks and were provided leak calculations that did not indicate they were big enough to require reporting.

The inspectors reported that DuPont officials told them leaks were spotted in equipment called the "hot interphase" but were fixed.

The plaintiffs' attorneys have submitted testimony from DuPont operations official Daniel Monhollen that during the 2013 visit, he took DEQ officials on a tour of the plant and showed them a drain valve where a "ground leak" had been fixed.

Monhollen did not tell the DEQ workers about other past leaks nor show them the suction systems being used to control those other leaks because DEQ was mainly asking about the ground leak.

"The specific complaint was there was a ground leak. That was the only thing I could think of," Monhollen said in the December deposition.

John Applegate, an environmental law professor at Indiana University Maurer School of Law, said the rules developed from the Toxic Substances Control Act can naturally lead to disputes about whether reporting requirements are violated.

"In fact, TSCA is often a good example of the adage that 'the devil is in the details,'" Applegate said.

Juan Rodriguez — a spokesman for OSHA, which enforces workplace safety rules — said the agency was not aware of the allegations made in the suits. EPA's regional office in Dallas referred calls for comment to the agency's Washington, D.C., headquarters, which failed to respond to repeated inquiries. DEQ spokesman Greg Langley said agency officials cannot comment on pending litigation.

Still in early stages of the litigation, DuPont has focused first on attacking the legal

underpinnings of both Simoneaux's and Scott's cases, challenging whether they can proceed to trial.

U.S. District Judge Shelly D. Dick has denied DuPont motions to throw out the lawsuits. No trial date has been set in either case.

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